



Office of the Attorney General

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Honorable William J. Casey
Director of Central Intelligence
Washington, D. C. 20505

Dear Bill:

Thank you for your letter of December 22, 1981, setting forth your concerns regarding the relationship between the proposed Criminal Code and the conduct of intelligence activities. As I advised you previously, we want to ensure that these concerns are addressed. Accordingly, our staff is reviewing your letter and will contact Stanley Sporkin directly to discuss this matter in more detail.

Sincerely,

William French Smith
Attorney General

DOJ Review Completed

1 a title of a section describing an offense, shall be construed in its generic sense
2 when it is used outside such section without reference to the number of such
3 section.

4 "(d) DISJUNCTIVE AND CONJUNCTIVE TERMS.—A list of items in which the
5 term 'or' or the term 'and' appears between the next to last item and the last
6 item shall be read as if such term appeared after each of the preceding items in
7 the list.

8 "(e) NUMBER, GENDER, AND TENSE.—A term—
9 "(1) that is used in the singular includes and applies to the plural of the
10 term;

11 "(2) that is used in the plural includes and applies to the singular of the
12 term;

13 "(3) that signifies the masculine gender includes and applies to the femi-
14 nine gender and the neuter gender; and

15 "(4) that is used in the present tense includes the future tense and,
16 unless a different construction is plainly required, the past tense.

17 "CHAPTER 2—JURISDICTION

"Sec.

"201. Federal Jurisdiction.

"202. General Jurisdiction of the United States.

"203. Special Jurisdiction of the United States.

"204. Extraterritorial Jurisdiction of the United States.

"205. Exercise of Concurrent Federal Jurisdiction.

"206. Concurrent Federal Jurisdiction Generally Not Preemptive.

18 "§ 201. Federal Jurisdiction

19 "(a) JURISDICTION IN GENERAL.—Federal jurisdiction over an offense de-
20 scribed in this title includes—

21 "(1) the general jurisdiction of the United States, as set forth in section
22 202;

23 "(2) the special jurisdiction of the United States, as set forth in section
24 203; and

25 "(3) the extraterritorial jurisdiction of the United States, as set forth in
26 section 204.

27 "(b) JURISDICTION APPLICABLE TO SPECIFIC OFFENSES.—

28 "(1) If, in a section describing an offense, there is a separate subsection
29 in which one or more circumstances are specified as giving rise to federal
30 jurisdiction over the offense, there is federal jurisdiction over the offense—

31 "(A) if such a circumstance exists or has occurred and the offense
32 is committed within—

33 "(i) the general jurisdiction of the United States; or

34 "(ii) the special jurisdiction of the United States to the extent
35 that such jurisdiction is specified as such a circumstance in the
36 separate subsection; or

1 (B) whether or not such a circumstance exists or has occurred if
 2 the offense is committed within the extraterritorial jurisdiction of the
 3 United States to the extent applicable under section 204;

4 unless the offense is described as a violation of, or involves conduct re-
 5 quired by, a statute outside this title, or a regulation, rule, or order issued
 6 pursuant thereto, in which case there is federal jurisdiction over the of-
 7 fense to the extent applicable under that statute. Federal jurisdiction may
 8 be alleged as resting on more than one of such circumstances, but proof of
 9 any such circumstance is sufficient to establish the existence of federal ju-
 10 risdiction over the offense. Proof of more than one of such circumstances
 11 does not increase the number of offenses that may be found to have been
 12 committed. If federal jurisdiction over an offense exists by virtue of its
 13 commission during another offense, jurisdiction also exists over any lesser
 14 included offense.

15 (2) If, in a section describing an offense, there is no separate subsec-
 16 tion in which one or more circumstances are specified as giving rise to
 17 federal jurisdiction over the offense, there is federal jurisdiction over the
 18 offense if it is committed within—

19 (A) the general jurisdiction of the United States;

20 (B) the special jurisdiction of the United States; or

21 (C) the extraterritorial jurisdiction of the United States to the
 22 extent applicable under section 204;

23 unless the offense is described as a violation of, or involves conduct re-
 24 quired by, a statute outside this title, or a regulation, rule, or order issued
 25 pursuant thereto, in which case there is federal jurisdiction over the of-
 26 fense to the extent applicable under that statute.

27 (3) In a case in which federal jurisdiction over an offense exists solely
 28 by virtue of its commission during another offense over which federal juris-
 29 diction exists, federal jurisdiction over the ancillary offense continues to
 30 exist notwithstanding that the prosecution for the other offense is terminat-
 31 ed in favor of the defendant, unless the court finds that there was not a
 32 substantial basis for the prosecution for the other offense.

33 (c) JURISDICTION NOT AN ELEMENT OF OFFENSE.—The existence of feder-
 34 al jurisdiction is not an element of the offense.

35 § 202. General Jurisdiction of the United States

36 An offense is committed within the general jurisdiction of the United States if
 37 it is committed within the United States.

38 § 203. Special Jurisdiction of the United States

39 An offense is committed within the special jurisdiction of the United States if
 40 it is committed within the special territorial jurisdiction, the special maritime

1 jurisdic
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1. "(C) an organization created by or under the laws of the United
2 States or of a State;

3. "(2) a civil aircraft of the United States, as defined in section 101 of the
4 Federal Aviation Act of 1958 (49 U.S.C. 1301);

5. "(3) any other aircraft within the United States;

6. "(4) any other aircraft outside the United States—

7. "(A) that has its next scheduled destination or last point of depar-
8 ture in the United States, and that next lands in the United States;

9. or

10. "(B) that has an 'offense', as defined in the Convention for the
11 Suppression of Unlawful Seizure of Aircraft, committed aboard, and
12 that lands in the United States with the alleged offender still aboard;

13. and

14. "(5) any other aircraft leased without crew to a lessee who has his prin-
15 cipal place of business in the United States, or, if the lessee has no prin-
16 cipal place of business, who has his permanent residence in the United

17 States; during the period that such aircraft is in flight, which is, for the purpose of this
18 subsection, from the moment when all the external doors of such aircraft are

19 closed following embarkation until the moment when any such door is opened for
20 disembarkation, or, in the case of a forced landing, until a competent authority

21 takes over the responsibility for the aircraft and for the persons and property
22 aboard.

23 aboard.

24. **§ 204. Extraterritorial Jurisdiction of the United States**

25. "Except as otherwise expressly provided by statute, or by treaty or other
26 international agreement, an offense is committed within the extraterritorial juris-
27 diction of the United States if it is committed outside the general or special
28 jurisdiction of the United States and—

29. "(a) the offense is a crime of violence and the victim or intended victim
30 is—

31. "(1) a United States official;

32. "(2) a federal public servant outside the United States for the pur-
33 pose of performing his official duties; or

34. "(3) a national of the United States, or an invitee of a national of
35 the United States, on the premises of a United States embassy or
36 consulate;

37. "(b) the offense is treason or sabotage against the United States;

38. "(c) the offense consists of—

39. "(1) counterfeiting or forgery of, or uttering of a counterfeited or
40 forged copy of, or issuing without authority, a seal, currency, secu-

1 rity, instrument of credit, stamp, passport, or public document that is
2 or that purports to be issued by the United States;

3 "(2) perjury or false swearing in a federal official proceeding;

4 "(3) making a false statement in a federal government matter or a
5 federal government record;

6 "(4) bribery or graft involving a federal public servant;

7 "(5) fraud against the United States or theft of property in which
8 the United States has an interest;

9 "(6) impersonation of a federal public servant; or

10 "(7) any obstruction or impairment of a federal government func-
11 tion, if committed by a national or resident of the United States;

12 "(d) the offense consists of the manufacture or distribution, as defined in
13 21 U.S.C. 802, of narcotics or other drugs for import into, or eventual
14 sale or distribution within, the United States;

15 "(e) the offense consists of entry of persons or property into the United
16 States;

17 "(f) the offense consists of possessing an explosive in a building owned
18 by, or under the care, custody, or control of, the United States;

19 "(g) the offense is committed in whole or in part within the United
20 States, the accused participates outside the United States, and the offense
21 causes or threatens harm, of the type sought to be prevented by the stat-
22 ute describing the offense—

23 "(1) within the United States; or

24 "(2) outside the United States to—

25 "(A) an individual who is a citizen, national, or resident of the
26 United States;

27 "(B) an organization established under the laws of a State or
28 having its principal place of business in the United States; or

29 "(C) the United States;

30 "(h) the offense constitutes an attempt, a conspiracy, or a solicitation to
31 commit a crime within the United States;

32 "(i) the offense is committed by a federal public servant other than a
33 member of the armed forces who is subject to court-martial jurisdiction for
34 the offense at the time he is charged with the offense, who is outside the
35 United States because of his official duties; or by a member of a federal
36 public servant's household who is residing abroad because of such public
37 servant's official duties; or by a person accompanying the military forces of
38 the United States;

39 "(j) the offense is committed by or against a national of the United
40 States at a place outside the jurisdiction of any nation; or